REMARKS

I. Introduction

Claims 1-3, 6, 7, 9 and 11-14 are currently pending in the present application after cancellation of claim 8. Claims 1, 6 and 13 have been amended. For at least the reasons set forth below, Applicants respectfully submit that the claims are in condition for allowance.

II. Rejections of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 112, first paragraph

Claims 1-3, 6-9 and 11-14 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claim 8 has been canceled. Although Applicants completely disagree with the Examiner's assertions in support of the rejection, Applicants have extensively amended the pending claims in order to expedite the prosecution of the present application, which already has a protracted prosecution history.

With respect to claim 1, the Examiner states that the claimed recitation of "the loss of a speed regulating function occurs solely via command of the driver" presents new matter because the specification does not limit the invention with the terminology "solely." Applicants note that the phrase at issue has been deleted, and amended claim now recites "wherein the second operating mode provides in certain instances an automatic braking of the vehicle to a standstill, and wherein the first operating mode does not provide the automatic braking of the vehicle to a standstill; . . . wherein the decision unit is configured to cause a change from the second operating mode into the first operating mode only if the driver provides to the input device an input of a desired speed greater than the upper limit of the second predetermined vehicle speed range." The claimed limitations are clearly described in the Specification: a) the automatic braking to a standstill is only available in the Stop & Roll mode, but not in the ACC mode (p. 8, l. 5-7); and b) the change from the Stop & Roll mode to the ACC mode requires the driver's operation of the input keys 12 or 14 (p. 9, l. 37 – p. 10, l. 6; p. 10, l. 26-29), and "this mode change does not take place without the active participation of the driver" (p. 5, l. 31-35; p. 10, l. 29-30; and p. 12, l. 33 – p. 13, l. 2).

For at least the foregoing reasons, Applicants submit that claim 1 and its dependent claims 2-3, 6, 7, 9 and 11-14 are in compliance with the written description requirement of 35 U.S.C. § 112, first paragraph.

Claims 1-3, 6-9, 11-14 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicants note that the rejection should be withdrawn for at least the following reasons.

The Examiner's concerns with respect to the claimed recitation of "a loss of a speed regulating function" has been addressed, as explained above in connection with the written description rejection.

In response to the Examiner's comments regarding the limitation regarding the deactivation of the speed controller, claim 1 has been amended to recite "when, in the second operating mode, the driver does not input a new desired speed to the input device and the driver increases the speed of the vehicle by operating a gas pedal of the motor vehicle to exceed a threshold speed equal to the limiting speed plus a predetermined positive value, the decision unit is configured to deactivate the speed controller." The amended feature is clearly described in the Specification, e.g., on p. 13, l. 31-36 of the Specification ("[i]f the desired speed remains unchanged, and the driver accelerates by operating the gas pedal, . . . the speed becomes greater than the speed permissible for the Stop & Roll mode. In this case the speed controller is compulsorily deactivated").

To the extent the Examiner contends that the phrase "the loss of the speed regulating function occurs solely via a command of the driver to the input device" conflicts with the remainder of the claimed limitations which are performed automatically, Applicants have amended claim 1 to recite that "**the decision unit is configured to cause** a change from the second operating mode into the first operating mode **only if the driver provides to the input device** an input of a desired speed greater than the upper limit of the second predetermined vehicle speed range," which limitation is entirely consistent with the remainder of the limitations in claim 1, including the limitation that "[the] decision unit [is] configured to

determine, using predefined criteria, whether a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode."

To the extent the Examiner states, without any explanation, that the "rejection also applies to 'activated ***only*** above a limiting speed,'" Applicants note that no ambiguity or inconsistency is presented by the claimed feature that "an operating mode for a first predetermined vehicle speed range that is configured to be activated only above a limiting speed V_s," since this claimed feature is clearly described in the specification, e.g., page 2, lines 1-4 ("[t]he ACC mode is unsuitable for these traffic situations and is therefore only able to be activated when the speed of one's own vehicle is above a certain limiting speed, such as above 30 km/h"), as well as clearly shown in Fig. 2 (ACC mode speed range is above speed V_s) and described in the associated Specification passage on p. 8, l. 30-35.

To the extent the Examiner notes that the claimed first and second predetermined vehicle speed ranges are indefinite because there are "no definite bounds that differentiate the speed ranges" and both 30 km/h and 40 km/h are mentioned in the Specification as "limiting speed," Applicants note that amended claim 1 clearly define and differentiate the bounds of the first and second speed ranges, i.e., "a lower limit of the first predetermined vehicle speed range is equal to the limiting speed V_s, and wherein a lower limit of the second predetermined vehicle speed range is lower than the limiting speed V_s, and wherein an upper limit of the second predetermined vehicle speed range is greater than the limiting speed V_s and lower than an upper limit of the first predetermined vehicle speed range, and wherein the first predetermined vehicle speed range and the second predetermined vehicle speed range at least partially overlap." The above-recited claimed limitations clearly describe the ACC and S&R speed ranges shown in Fig. 2 (ACC speed range being "the first predetermined vehicle speed range," and S&R speed range being "the second predetermined vehicle speed range"). To the extent the Examiner cites p. 2, l. 1-4 and 31-33 as describing two different speeds (30 km/h and 40 km/h) for the claimed "limiting speed V_s," Applicants note that cited sections of the Specification do not support the Examiner's interpretation: p. 2, l. 1-4 indicate that the ACC mode (equivalent to the claimed first operating mode with "the first predetermined vehicle speed range") is activated "above a certain limiting speed 30 km/h"; and p. 2, l. 31-33 indicated that "the stop and go mode is typically only activatable at speeds up to an upper

limiting speed, such as up to 40 km/h." Accordingly, it is clear from the cited sections of the Specification that "a certain limiting speed 30 km/h" refers to an example of the lower limit of the ACC mode, and "an upper limiting speed, such as up to 40 km/h" refers to an example of the upper limit of the stop and go mode. For at least these reasons, there is no ambiguity or inconsistency in the claimed limitations and/or in the specification.

For at least the foregoing reasons, Applicants submit that claim 1 and its dependent claims 2-3, 6, 7, 9 and 11-14 are in compliance with 35 U.S.C. § 112, first paragraph, and the enablement rejection should be withdrawn.

III. Rejection of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 112, second paragraph

Claims 1-3, 6-9 and 11-14 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject mater which applicants regard as the invention. Since the bases of the indefiniteness rejection are substantially identical to the bases of the rejection for the enablement rejection, and since Applicants have fully explained above the amendments which overcome the enablement rejection, it is respectfully submitted that the indefiniteness rejection is also overcome for the reasons explained in connection with the enablement rejection. Accordingly, Applicants submit that claim 1 and its pending dependent claims 2-3, 6, 7, 9 and 11-14 are in compliance with 35 U.S.C. § 112, second paragraph.

IV. Rejection of Claims 1-3, 6-9 and 11-14 under 35 U.S.C. § 102(e)

Claims 1-3, 6-9 and 11-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,658,344 ("Hirasago"). Applicants respectfully submit that Hirasago fails to anticipate pending claims 1-3, 6-9 and 11-14, for the reasons explained below.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman,

703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

In contrast to amended claim 1, Hirasago clearly fails to teach or suggest "a plurality of operating modes differing in functional scope" or that "the decision unit is configured to cause a change from the second operating mode [which provides automatic braking to a standstill] into the first operating mode [which does not provide automatic braking to a standstill] **only if the driver provides to the input device** an input of a desired speed greater than the upper limit of the second predetermined vehicle speed range." In addition, nothing in Hirasago teaches or suggests that the "decision unit [is] configured to determine, using predefined criteria, whether a change in the desired speed input by the driver is to be interpreted as a command for changing the current operating mode." Still further, Hirasago clearly does not teach or suggest that "when, in the second operating mode, the driver does not input a new desired speed to the input device and the driver increases the speed of the vehicle by operating a gas pedal of the motor vehicle to exceed a threshold speed equal to the limiting speed plus a predetermined positive value, the decision unit is configured to deactivate the speed controller."

For the foregoing reasons, claim 1 and its dependent claims 2-3, 6, 7, 9 and 11-14 are not anticipated by Hirasago. Withdrawal of the anticipation rejection of pending claims 1-3, 6, 7, 9 and 11-14 is respectfully requested.

V. Conclusion

In view of the foregoing, it is submitted that claims 1-3, 6, 7, 9 and 11-14 are in allowable condition. It is therefore respectfully requested that the present application issue as early as possible.

Respectfully submitted,
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